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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,821	03/19/2004	Bruce D. Nelson	14628.3USU1	7103

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EXAMINER

BASINGER, SHERMAN D

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/804,821	Applicant(s) NELSON, BRUCE D.	
	Examiner Sherman D. Basinger	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-19, 26 and 28 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5-14, 20-25, 27 and 29 is/are rejected.
- 7) ☒ Claim(s) 2 and 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/11/05 & 3/19/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The replacement sheet of drawings filed May 11, 2005 has been approved.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by Faidi.

Faidi discloses a method for protecting the hull of watercraft both above and below the waterline while it is moored in water using an in-water storage device having an inflatable fender 68

that surrounds the sides and bow of the watercraft (see figure 1); a movable rigid aft section created by weights 46 mounted to the

inflatable fender; and a flexible, water-impervious lower sheet section 34 attached to the inflatable

fender and aft section that envelops the under waterline section of the hull; comprising the steps

of:

(a) lowering the aft section of the in-water storage device as is shown in figure 14 to thereby provide

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access of the watercraft into the in-water storage device, and once the watercraft is in the in-

water storage device, raising the aft section as is shown by broken lines in figure 14 so that the lower sheet section envelops the under

waterline section of the hull to protect it from biofouling; and

(b) while the watercraft is kept in the in-water storage device, preventing the above waterline section of the hull from coming into contact with stationary or floating objects

by virtue of the inflatable fender surrounding the watercraft.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3, 5-8, 10 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiswell, Jr. in view of Faidi.

Wiswell, Jr. discloses a watercraft storage apparatus for storing a watercraft in water, the watercraft shown in figure 1 having a hull and a bow, two sides, and an aft, comprising:

a portion 12 that surrounds the sides and the bow of the watercraft above the waterline and is sized to provide protection of an above waterline section of the hull from

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damage that can be caused from wave action or from other objects striking or coming into

contact with the hull;

a flexible, water-impervious, lower sheet section 11 attached to the inflatable portion that envelops the under waterline section of the hull; and

a moveable aft section made up of legs 20 mounted to the inflatable portion that allows for entry and

exit of the watercraft from an area bounded by the inflatable portion and the aft section and wherein

the inflatable portion 12 maintains a general U-shape as is shown in figure 2.

While Wiswell, Jr. discloses that the moveable aft section includes a rigid portion 18 defining a general U-shape, Wiswell, Jr. does not disclose that the portion 12 is inflatable and that the inflatable portion lacks a rigid frame structure.

Wiswell, Jr. does disclose that portion 12 is made up of wide seams of sheet 11 packed with styrofoam or some other expanded and buoyant material.

Faidi discloses inflatable tube 68 attached to sheet 34, inflatable tube 68 being an expanded and buoyant material and not requiring a rigid frame structure.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains in view of inflatable tube 68 of Faidi to provide inside of each seam 12 of Wiswell, Jr. an inflatable tube lacking a frame as the expanded and buoyant material.

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Motivation to do so is to allow packing of the unit of Wiswell, Jr. more easily by deflating the tubes.

With regard to claim 3, the U-shaped drop down gate is made up of each of legs 20 of Wiswell, Jr., each leg having rigid tubing 18. Note that while claim 3 defines the gate as being a drop down gate, claim 3 does not define what operation makes it a drop down gate.

Wiswell, Jr. does not disclose the undershield of claim 5, nor the check valve of claim 8. Note the undershield of Faidi provided by the weight 46 of the sump 40 and the check valve of Faidi provided by sump pump 42 of Faidi. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to provide a sump weight similar to 46 of Faidi to the sheet of Wiswell, Jr. and a sump pump similar to 42 of Faidi to the sheet 11 of Wiswell, Jr.

Motivation to do so is to pump water out of the sheet if so desired.

The guidepost of claim 6 is 19 of Wiswell, Jr.

Sheet section 11 of Wiswell, Jr. is made from pvc and is therefore buoyant.

Sheet 11 due to the seams receiving the expanded and buoyant material and due to the sleeve for legs 20 is removable from the inflatable portion provided by Faidi.

The rub guards of claim 12 are 30 of Wiswell, Jr.

The combination of Wiswell, Jr. and Faidi does not disclose the inflatable portions has having a cross section of at least 9 inches or between 6 and 18 inches; however, to provide the inflatable portion with a cross section of at least 9 inches but less than 18 inches would have been obvious at the time the invention was made to a person having

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ordinary skill in the art to which said subject matter pertains. Motivation to do so is to provide sufficient buoyancy to the sheet 11 of Wiswell, Jr.

6. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiswell, Jr. and Faidi as applied to claim 1 above, and further in view of EP 360436.

Wiswell, Jr. does not disclose sheet 11 as being embedded with a biocide. Note in EP 436 column 5, lines 35-45. In view of this teaching of EP 436, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to provide the sheet 11 of Wiswell, Jr. with embedded biocide. Motivation to do so is found in lines 35-45 of column 5 of EP 436.

The material of sheet 11 of Wiswell, Jr. is considered to be puncture and abrasion resistant. However, the seams of sheet 11 of Wiswell, Jr. which are used to form portions 12 are not FRO welded. EP 436 discloses the use of welding to attach sheet material to his envelope. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use welding to form a seam to secure the sheet 11 of Wiswell, Jr. to portions 12. One type of well know welding for plastics is FRO welding. Motivation to do so is to better secure the sheet to form the portions 12.

7. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faidi in view of Wood.

In Faidi the inflatable portion is 68, the flexible lower sheet section is 34 and the moveable aft section is shown in figure 14.

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Faidi does not disclose the sheet 34 being detachable from the inflatable portion and moveable aft section. Wood discloses his sheet B being detachable from portion 10 with the use of tubing elements 54. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to make the sheet 34 of Faidi be detachable from the inflatable portion and moveable aft section with the use of elements similar to elements 54 of Wood. Motivation to do so is found in Wood column 3, lines 39-42.

The peripheral flap of claim 23 would be provided to Faidi in view of the peripheral flap of Wood shown in figure 4. The peripheral flap of figure 4 of Wood is the free end of the bag B. In making the sheet of Faidi detachable to the inflatable portion 68 of Faidi in the manner taught by Wood, a peripheral flap similar to that of Wood would be provided to the sheet when it is detachable secured to the inflatable portion 68 of Faidi with elements similar to 54 of Wood.

To provide grommets or hook and loop fastener material to the flap would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Faidi teaches the use of clamps 25 to fasten the sheet to the inflatable portion after the sheet has been looped around it. Grommets and hoop and loop fastener are merely different fasteners than clamps 25. To choose using a grommet or hook and loop fastener over clamps 25 would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said



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subject matter pertains. Motivation to do so is in the case of hook and loop fasteners, separation of the flap free end from the remainder of the sheet 34 of Faidi would be much quicker. Motivation to provide grommets is to allow the use of a line to fasten the free end of the flap to the remainder of the sheet.

8. Claims 20 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faidi in view of Jackson 822.

Faidi does not disclose the inflatable portion 68 defining a maximum outside dimension greater than a maximum width defined by the sides of the watercraft, the inflatable portion 68 defining a minimum inside dimension less than the maximum width defined by the sides of the watercraft and positioning the watercraft within the inner area such that each side of the watercraft has an inflatable portion of the inflatable apparatus disposed directly under the widest portion of the side of the watercraft, but does disclose a water impervious lower sheet section 34 attached to the inflatable portion and enveloping the under waterline section of the hull and a moveable aft section as is shown in figure 14, and does disclose driving the watercraft into the inner area of the apparatus while the inflatable apparatus is floating on a top surface of the water.

In Jackson 822 the inflatable portion 6 defines a maximum outside dimension greater than a maximum width defined by the sides of the watercraft, the inflatable portion 6 defines a minimum inside dimension less than the maximum width defined by the sides of the watercraft and the watercraft is positioned within the inner area such that each side of the watercraft has an inflatable portion of the inflatable

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apparatus disposed directly under the widest portion of the side of the watercraft, and a water impervious sheet is positioned beneath all portions of the hull of the watercraft.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains in view of the teachings of Jackson to design the inflatable portion 68 of Faidi or to use a boat of such dimensions in the apparatus of figure 14 of Faidi such that the inflatable portion 68 defines a maximum outside

dimension greater than a maximum width defined by the sides of the watercraft, the inflatable portion 68 defines a minimum inside dimension less than the maximum width defined by the sides of the watercraft and the watercraft is positioned within the inner area such that each side of the watercraft has an inflatable portion of the inflatable apparatus disposed directly under the widest portion of the side of the watercraft, and the water impervious sheet 34 is positioned beneath all portions of the hull of the watercraft. Again, these parameters are dependent on the size of the watercraft used in the apparatus, or on the size of the apparatus. Motivation to make the above modifications to Faidi is to locate the inflatable portion close to the boat so that it can be easily reached if need be, or to use a much larger boat in the apparatus of Faidi than that being disclosed.

9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faidi and Jackson as applied to claim 20 above, and further in view of Wood as combined with Faidi in paragraph 7.

***Allowable Subject Matter***

10. Claims 15-19, 26 and 28 are allowed.
11. Claims 2 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

12. Applicant's arguments filed May 11, 2005 have been fully considered but they are not persuasive.

With regard to the arguments concerning claim 1 and any claim depending therefrom not allowed, due to the amendments to claim 1, a new grounds of rejection with Wiswell, Jr. modified with Faidi has been set forth.

It is felt that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use as the expanded and buoyant inserts in wide seams 12 of Wiswell, Jr. inflatable tubes similar to 68 of Faidi, tubes 68 of Faidi requiring no frame.

With regard to applicant's arguments concerning the combination of Faidi and Jackson, the only teaching of Jackson of interest was that showing the inflatable portion extending at its outer periphery beyond the widest portion of the watercraft and inner periphery less than the widest portion of the watercraft. Nothing beyond this teaching is used in the combination of Faidi and Jackson. Further, as stated in the rejection, as to whether the inflatable portion of the apparatus has an outer periphery greater than the widest portion of the watercraft and an inner periphery less than the width of the widest

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portion of the watercraft depends on the size of the watercraft. Basically, applicant is basing patentability of the claims in question on a variable which can change by the decision of a user of the apparatus to use a watercraft of a larger dimension.

Applicant's arguments concerning claims 22-25 are noted. It is still felt that a c-shaped member such as 54 of Wood can be used to attached the sheet to the inflatable portion 68 of Faidi. Plastic members such as 54 of Wood can be varied in flexibility such that they can be made to work with inflatable members.

New claim 29 is felt to be anticipated with Faidi.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 571-272-6679. The examiner can normally be reached on Monday through Friday, 5:30 a.m. to 2:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Sherman D. Basinger  
Primary Examiner  
Art Unit 3617  
6/2/05

6/2/05